

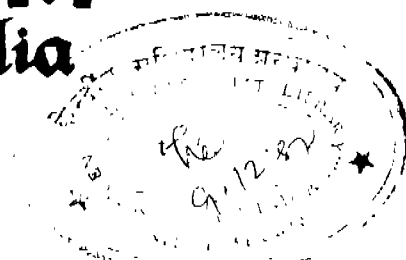


भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY



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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन
के रूप में रखा जा सके ।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on the 23rd March, 1987:—

BILL NO. 36 OF 1987

A Bill to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith.

BE it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Prevention of Corruption Act, 1987. Short title and extent.
- (2) It extends to the whole of India except the State of Jammu and Kashmir and it applies also to all citizens of India outside India.
2. In this Act, unless the context otherwise requires,— Definitions.
 - (a) “election” means any election, by whatever means held, under any law for the purpose of selecting members of Parliament or of any Legislature, local authority or other public authority;
 - (b) “public duty” means a duty in the discharge of which the State, the public or the community at large has an interest;

Explanation.—In this clause “State” includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;

1 of 1956.

(c) “public servant” means—

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority;

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;

1 of 1956.

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;

1 of 1956.

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

Explanation 1.—Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

CHAPTER II

APPOINTMENT OF SPECIAL JUDGES

3. (1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:—

Power to appoint special Judges.

(a) any offence punishable under sections 7 to 9, 11, 13 and 14; and

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973.

2 of 1974.

4. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.

2 of 1974.

Cases triable by special Judges.

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

2 of 1974.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis.

2 of 1974.

5. (1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973, for the trial of warrant cases by Magistrates.

2 of 1974.

Procedure and Powers of special Judge.

(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973, be deemed to have been tendered under section 307 of that Code. 2 of 1974.

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973, shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for the purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor. 2 of 1974.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate. 2 of 1974.

(5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944.

Ord.
38 of 1944.

Power to
try summarily.

6. (1) Where a special Judge tries any offence specified in sub-section (1) of section 3, alleged to have been committed by a public servant in relation to the contravention of any special order referred to in sub-section (1) of section 12A of the Essential Commodities Act, 1955 or of an order referred to in clause (a) of sub-section (2) of that section, then, notwithstanding anything contained in sub-section (1) of section 5 of this Act or section 260 of the Code of Criminal Procedure, 1973, the special Judge shall try the offence in a summary way, and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial. 10 of 1955.
2 of 1974.

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the special Judge to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the special Judge shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed

to hear or re-hear the case in accordance with the procedure prescribed by the said Code for the trial of warrant cases by Magistrates.

2 of 1974.

(2) Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973, there shall be no appeal by a convicted person in any case tried summarily under this section in which the special Judge passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order under section 452 of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence in excess of the aforesaid limits is passed by the special Judge.

CHAPTER III

OFFENCES AND PENALTIES

7. Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Public servant taking gratification other than legal remuneration in respect of an official act.

Explanations.—(a) “Expecting to be a public servant.” If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section;

(b) “Gratification.” The word “gratification” is not restricted to pecuniary gratifications or to gratifications estimable in money;

(c) “Legal remuneration.” The words “legal remuneration” are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept;

(d) “A motive or reward for doing.” A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression;

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

Taking gratification in order by corrupt or illegal means, to influence public servant.

8. Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Taking gratification, for exercise of personal influence with public servant.

9. Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Punishment for abetment by public servant of offences defined in section 8 or 9.

10. Whoever, being a public servant, in respect of whom either of the offences defined in section 8 or section 9 is committed, abets the offence, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant.

11. Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Punishment for abetment of offences defined in section 7 or 11.

12. Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

13. (1) A public servant is said to commit the offence of criminal misconduct,—

Criminal
mis-
conduct
by a
public
servant.

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

14. Whoever habitually commits,—

(a) an offence punishable under section 8 or section 9; or

(b) an offence punishable under section 12,

Habitual
commit-
ing of
offence
under
sections
8, 9 and
12,

shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to seven years and shall also be liable to fine.

Punish-
ment for
attempt.

15. Whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section (1) of section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

Matters
to be
taken
into con-
sideration
for fixing
fine.

16. Where a sentence of fine is imposed under sub-section (2) of section 13 or section 14, the court in fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

CHAPTER IV

INVESTIGATION INTO CASES UNDER THE ACT

Persons
authorised
to investi-
gate.

17. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank,—

2 of 1974.

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973, of an Assistant Commissioner of Police;

2 of 1974.

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank,

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

Power to
inspect
bankers'
books.

18. If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under section 17 and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to the accounts of the persons suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this section;

Provided that no power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.

Explanation.—In this section, the expressions “bank” and “bankers’ books” shall have the meanings respectively assigned to them in the Bankers’ Books Evidence Act, 1891.

18 of 1891.

CHAPTER V

SANCTION FOR PROSECUTION AND OTHER MISCELLANEOUS PROVISIONS

19. (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—

Previous
sanction
necessary
for prose-
cution.

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed,

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

2 of 1974

(a) no finding sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

Presump-
tion where
public
servant
accepts
gratification
other than
legal
remunera-
tion.

20. (1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn

Accused
person
to be a
competent
witness.

21. Any person charged with an offence punishable under this Act, shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that—

(a) he shall not be called as a witness except at his own request;

(b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;

(c) he shall not be asked, and if asked shall not be required to answer, any question tending to show, that he has committed or been

convicted of any offence other than the offence with which he is charged, or is of bad character, unless—

(i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or

(ii) he has personally or by his pleader asked any questions of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or

(iii) he has given evidence against any other person charged with the same offence.

2 of 1974.

22. The provisions of the Code of Criminal Procedure, 1973, shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if,—

The Code of Criminal Procedure, 1973 to apply subject to certain modifications.

(a) in sub-section (1) of section 243, for the words "The accused shall then be called upon", the words "The accused shall then be required to give in writing at once or within such time as the Court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon" had been substituted;

(b) in sub-section (2) of section 309, after the third proviso, the following proviso had been inserted, namely:—

"Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under section 397 has been made by a party to the proceeding.";

(c) after sub-section (2) of section 317, the following sub-section had been inserted, namely:—

"(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination.";

(d) in sub-section (1) of section 397, before the *Explanation*, the following proviso had been inserted, namely:—

"Provided that where the powers under this section are exercised by a Court on an application made by a party to such proceedings, the Court shall not ordinarily call for the record of the proceedings:—

(a) without giving the other party an opportunity of showing cause why the record should not be called for; or

(b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies."

Particulars
in a
charge in
relation to
an offence
under
section
13(1)(c).

23. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, when an accused is charged with an offence under clause (c) of sub-section (1) of section 13, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219 of the said Code:

2 of 1974.

Provided that the time included between the first and last of such dates shall not exceed one year.

Statement
by bribe
giver not
to subject
him to
prosecution.

24. Notwithstanding anything contained in any law for the time being in force, a statement made by a person in any proceeding against a public servant for an offence under sections 7 to 11 or under section 13 or section 15, that he offered or agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to a prosecution under section 12.

Military,
Naval and
Air force
or other
law not
to be
affected.

25. (1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under the Army Act, 1950, the Air Force Act, 1950, the Navy Act, 1957, the Border Security Force Act, 1968, the Coast Guard Act, 1978 and the National Security Guard Act, 1986.

45 of 1950.
46 of 1950.
62 of 1957.
47 of 1968.
30 of 1978.
47 of 1986.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), the court of a special Judge shall be deemed to be a court of ordinary criminal justice.

Special
Judges
appoint-
ed under
Act 46 of
1952 to be
special
Judges
appoint-
ed under
this Act.

26. Every special Judge appointed under the Criminal Law Amendment Act, 1952, for any area or areas and is holding office on the commencement of this Act shall be deemed to be a special Judge appointed under section 3 of this Act for that area or areas and, accordingly, on and from such commencement, every such Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act.

Appeal
and
revision.

27. Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 on a High Court as if the court of the special Judge were a court of Session trying cases within the local limits of the High Court.

2 of 1974.

Act to
be in
addi-
tion to
any other
law.

28. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.

Amendment
of
Ord. 38
of 1944.

29. In the Criminal Law Amendment Ordinance, 1944,—

(a) in sub-section (1) of section 3, sub-section (1) of section 9, clause (a) of section 10, sub-section (1) of section 11 and sub-section

(1) of section 13, for the words "State Government", wherever they occur, the words "State Government or, as the case may be, the Central Government" shall be substituted;

(b) in section 10, in clause (a), for the words "three months", the words "one year" shall be substituted;

(c) in the Schedule,—

(i) paragraph 1 shall be omitted;

(ii) in paragraphs 2 and 4,—

(a) after the words "a local authority", the words and figures "or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in section 617 of the Companies Act, 1956 or a society aided by such corporation, authority, body or Government company" shall be inserted;

(b) after the words "or authority", the words "or corporation or body or Government company or society" shall be inserted;

(iii) for paragraph 4A, the following paragraph shall be substituted, namely:—

"4A. An offence punishable under the Prevention of Corruption Act, 1987.";

(iv) in paragraph 5, for the words and figures "items 2, 3 and 4", the words, figures and letter "items 2, 3, 4 and 4A" shall be substituted.

1 of 1956.

2 of 1947.
46 of 1952.

30. (1) The Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1952 are hereby repealed.

Repeal
and
saving.

10 of 1897

(2) Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897, anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act.

10 of 1897.

31. Sections 161 to 165A (both inclusive) of the Indian Penal Code shall be omitted, and section 6 of the General Clauses Act, 1897, shall apply to such omission as if the said sections had been repealed by a Central Act.

Omission
of certain
sections
of Act
45 of 1889.

STATEMENT OF OBJECTS AND REASONS

The Bill is intended to make the existing anti-corruption laws more effective by widening their coverage and by strengthening the provisions.

2. The Prevention of Corruption Act, 1947, was amended in 1964 based on the recommendations of the Santhanam Committee. There are provisions in Chapter IX of the Indian Penal Code to deal with public servants and those who abet them by way of criminal misconduct. There are also provisions in the Criminal Law Amendment Ordinance, 1944, to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. The Bill seeks to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants.

3. The Bill, *inter alia*, envisages widening the scope of the definition of the expression "public servant", incorporation of offences under sections 161 to 165A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included.

4. Since the provisions of sections 161 to 165A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the Indian Penal Code. Consequently, it is proposed to delete those sections with the necessary saving provision.

5. The notes on clauses explain in detail the provisions of the Bill.

NEW DELHI;

P. CHIDAMBARAM.

The 20th February, 1987.

Notes on clauses

Clause 2.—This clause defines the expressions used in the Bill. Clause 2(c) defines “public servant”. In the existing definition the emphasis is on the authority employing and the authority remunerating. In the proposed definition the emphasis is on public duty. The definition of “election” is based on the definition of this expression in the Indian Penal Code.

Clause 3.—This clause provides for appointment of special Judges both by the Central Government and the State Governments. Except the power conferred on the Central Government to appoint special Judges, this clause is based on section 6 of the Criminal Law Amendment Act, 1952.

Clause 4.—This clause deals with the cases triable by a special Judge. Sub-clause (4) of this clause provides for holding of trial by a special Judge on day-to-day basis for speedy trial of the cases. Other provisions in this clause are based on section 7 of the Criminal Law Amendment Act, 1952.

Clause 5.—This clause deals with the procedure and powers of a special Judge. Sub-clause (6) of this clause confers on the special Judge powers exercised by a District Judge under the Criminal Law Amendment Ordinance, 1944 for the purposes of attachment of property. The remaining provisions of this clause are based on the provisions of section 8 of the Criminal Law Amendment Act, 1952.

Clause 6.— This clause empowers the special Judge, where he tries any offence specified in clause 3 alleged to have been committed by a public servant in relation to the contravention of any special order referred to in sub-section (1) of section 12A of the Essential Commodities Act, 1955, or of an order referred to in clause (a) of sub-section (2) of that section, to try the offence in a summary way. This clause is based on section 8A of the Criminal Law Amendment Act, 1952.

Clauses 7 to 12.—The provisions of sections 161 to 165A of the Indian Penal Code dealing with offences by or relating to public servants have been incorporated in these clauses, with slight modifications. By these modifications a minimum punishment has been introduced, the alternate punishment now available in the Indian Penal Code has been dispensed with, the existing punishment has been increased and the illustrations have been omitted.

Clause 13.—This clause deals with criminal misconduct by a public servant and corresponds to existing sub-sections (1) and (2) of section 5 of the Prevention of Corruption Act, 1947. Section 5(1)(d) of the Prevention of Corruption Act, 1947 relates to misconduct by a public servant by corrupt or illegal means or otherwise and obtaining pecuniary advantage for himself or for others. The effectiveness of this provision has been somewhat blunted by judicial pronouncements. In order to make the original intention of the legislature more clear, clause 12(1)(d)

has been split into three parts. Further, a definition of the expression "known sources of income" has been added to remove any ambiguity.

Clause 14.—This clause deals with habitual committing of offences under clauses 8, 9 and 12 and is analogous to section 5(3) of the Prevention of Corruption Act, 1947 with the modification that the minimum punishment shall be two years.

Clause 15.—This clause deals with punishment for attempt to commit the offences referred to in clause 13(1) (c) or (d) and is analogous to section 5(3A) of the Prevention of Corruption Act, 1947.

Clause 16.—This clause deals with matters to be taken into consideration by the Court in fixing the fine and is analogous to sub-sections (3B) and (4) of section 5 of the Prevention of Corruption Act, 1947.

Clause 17.—This clause deals with persons authorised to investigate cases under the Bill and is analogous to section 5A(1) of the Prevention of Corruption Act, 1947.

Clause 18.—This clause deals with the power to inspect banker's book by a police officer and is analogous to section 5A(2) of the Prevention of Corruption Act, 1947.

Clause 19.—This clause provides for previous sanction for prosecution in the case of a person employed in connection with the affairs of the Union, State Government or other authority and is analogous to section 6 of the Prevention of Corruption Act, 1947 except clause 19(3) which provides that on the ground of irregularity of sanction, no finding of the court can be reversed. Also no court can stay the proceedings in these cases because of irregularity in sanction or on any other ground.

Clause 20.—This clause provides for the presumption in any trial for an offence punishable under clause 7 or clause 11 or clause 13(1) (a) or (b), where an accused public servant has accepted gratification other than legal remuneration and is analogous to section 4 of the Prevention of Corruption Act, 1947.

Clause 21.—This clause provides that an accused person shall be a competent witness for his defence and is analogous to section 7 of the Prevention of Corruption Act, 1947.

Clause 22.—This clause provides for the application of the Code of Criminal Procedure 1973, subject to certain modifications and is analogous to section 7A of the Prevention of Corruption Act, 1947.

Clause 23.—This clause provides for the particulars in a charge in relation to an offence under clause 13(1) (c) and is analogous to section 6A of the Prevention of Corruption Act, 1947.

Clause 24.—This clause provides that a statement by a bribe giver shall not subject him to prosecution under clause 12 and is analogous to section 8 of the Prevention of Corruption Act, 1947.

Clause 25.—This clause provides for military, naval, air force or other law not to be affected by the provisions of the Bill and is analogous to section 11 of the Criminal Law Amendment Act, 1952.

Clause 26.—This clause provides that a special Judge appointed under the Criminal Law Amendment Act, 1952 and holding office on the commencement of the proposed legislation shall be deemed to be a special Judge appointed under clause 3.

Clause 27.—This clause provides for the exercise of powers of appeal and revision by the High Court and is analogous to section 9 of the Criminal Law Amendment Act, 1952.

Clause 28.—This clause provides that the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

Clause 29.—This clause seeks to amend the Criminal Law Amendment Ordinance, 1944. At present, only the State Governments are empowered to move the District Judge for attachment of property. It is proposed to take powers for the Central Government. The ad-interim attachment which is at present valid only for three months is also proposed to be made valid for one year in the first instance. The Schedule to the Ordinance is also proposed to be amended to include the offences against the property of not only the Central or State Governments but also of corporation established by or under a Central, Provincial or State Act or an authority or a body owned or controlled or aided by Government or a Government company or a Society aided by such corporation, authority, body or Government company.

Clause 30.—This clause provides for the repeal of the Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1952.

Clause 31.—This clause provides for the omission of sections 161 to 165A of the Indian Penal Code with necessary saving provision.

FINANCIAL MEMORANDUM

Clause 3(1) of the Bill provides that the Central Government or the State Government may appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified to try the offences mentioned therein. To begin with, it is proposed to appoint about 20 special Judges by the Central Government. The expenditure involved in this regard is estimated at Rs. 41 lakhs (Rs. 29 lakhs recurring and Rs. 12 lakhs non-recurring). This expenditure will be met from the Consolidated Fund of India.

2. The Bill will not involve any other expenditure either recurring or non-recurring.

SUBHASH C. KASHYAP,
Secretary-General.